

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLAUDETTE de LEON)
Plaintiff)
)
Vs.) (NO. 05-126E)
)
CRAWFORD CENTRAL SCHOOL DISTRICT)
CRAWFORD CENTRAL SCHOOL BOARD)
)
Defendants)
)
MICHAEL E. DOLECKI, SUPERINTENDENT)
)
Defendant)
)
CHARLES E. HELLER, III, ASSISTANT)
SUPERINTENDENT)
)
Defendant)
)
)) DEFENDANTS'
)) MOTION FOR SANCTIONS
)) FOR FAILURE TO COMPLY WITH
)) COURT ORDER
)
)) Roberta Binder Heath, Esquire
)) Pa. I.D. No. 50798
)) Counsel for Defendant
)
)) ANDREWS & BEARD
)) 3366 Lynnwood Drive
)) P.O. Box 1311
)) Altoona, PA 16603-1311
)) (814) 940-8670

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Defendant)

MOTION FOR SANCTIONS

AND NOW, comes the Defendants, by and through its attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion for Sanctions Pursuant to Rule 37 (b) and in support thereof, avers the following:

1. Plaintiff's Amended Complaint specifically request damages including back and front pay, compensatory damages under various theories pursuant to Title 7 of the Civil Rights Act of 1964, as amended, and the Americans With Disabilities Act. (See Plaintiff's amended Complaint that Requests for Relief)
2. Defendants herein incorporate by reference the initial Motion to Compel Plaintiff to Produce Tax Returns for the Years 2003 through 2005 and supporting brief as if fully set forth at length.

3. On May 1, 2006 Defendants filed a Motion to Compel Plaintiff to Produce Tax Returns for the Years 2003 through 2005. On May 15, 2006, parties participated in a telephone conference with the Honorable Sean J. McLaughlin, wherein Judge McLaughlin allowed the Plaintiff ten (10) days or until May 25, 2006 to provide financial information.

4. Plaintiff produced the following information relative to wages she allegedly claimed for the 2003-2005 years:

- a. W-2 Wage and Tax Statement for the year 2005 from the Telatron Marketing Group, Inc.
- b. W-2 Wage and Tax Statement for the year 2005 from the Erie City School District.
- c. Statement for Recipients of Pennsylvania Unemployment Compensation Benefits.
- d. W-2 Wage and Tax Statement for the year 2003 from the Crawford Central School District.
- e. Individual Income Tax Return for the Year 2003.
(See, Exhibit "A")

5. This information is at odds with Plaintiff's testimony concerning her work at a club playing piano and teaching salsa dancing and taking care of a woman with cancer. Nowhere in the information produced are those jobs and compensation for same addressed.

6. Defendants have reason to doubt Plaintiff's credibility. Thus, it appears that no less intrusive method exists to accurately verify wages, at least reported wages, for the period in question.

7. Plaintiff freely provided her 2003 tax return and provides no explanation why she refuses to provide either complete wage information for 2004 and 2005 or the tax returns.

8. This information is relevant and the proper subject to discovery in a Title VII Action, particularly where back pay is at issue. These tax returns provide information relative to mitigation of damages and also as to Plaintiff's credibility concerning the work that she had performed and the length of time she performed said work in the amount of compensation she received for the work to which testified about at her deposition. Plaintiff can site no legal precedent and has failed to site any legal precedent which would limit Defendant's ability to obtain the tax returns in this Title VII Action.

9. Due to Plaintiff inadequate response to the Honorable Sean J. McLaughlin's prior directive, Defendants filed a second Motion to Compel Tax Returns for the Years 2004 and 2005, on May 31, 2006. On June 26, 2006, the Honorable Sean J. McLaughlin entered an Order allowing Plaintiff ten (10) days to comply with said Order and provide requested tax returns no later than July 7, 2006.

10. In any event, more than three (3) days have passed and still Defendants have received no response from Plaintiff, nor any reason for the delay.

11. Therefore, pursuant to Rule 37 (b), Defendants request attorneys fees for the amount of filing two (2) Motions to Compel and this Motion for Sanctions relative to Plaintiffs violating this Court's June 26, 2006 Order, and an Order requiring full and complete answers within (5) days or be subject to further sanctions.

WHEREFORE, it is respectfully requested that \$1,600, (Exhibit "A") be awarded to the Defendants, as well as an indication that if full and complete responses to Defendants' discovery requests are not received immediately, further action will be taken by the Court including but not limited to assessing \$100 per day for each day that passes without Plaintiff's compliance.

Respectfully submitted,

ANDREWS & BEARD

/s/Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendant

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CERTIFICATE OF SERVICE

I, Roberta Binder Heath, Esquire, of the law firm of **ANDREWS & BEARD**, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the foregoing *Defendants' Motion for Sanctions for Failure to Comply with Court Order* has been served as follows on this the **10th** day of **July 2006** by mailing same first class United States mail, postage prepaid, addressed as follows:

Caleb L. Nichols, Esquire
P.O. Box 1585
Erie, PA 16507

ANDREWS & BEARD

/s/Roberta Binder Heath, Esquire
Pa.Id. No. 50798

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